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CHAIR'S LETTER

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have been your chair for a few short months and your Executive Committee and I have many challenges to meet. I am delighted and thankful that I have a dynamic group of highly competent and energetic individuals who help each day to make my task an easier one. Thanks to all of them. Keep up the great work! We will have a very successful year despite the obstacles which have been placed in our path.

As we enter 1998, we are faced with the prospect of a "new" Bar. This has been occasioned by the veto of the fees bill by the Governor. The Bar is looking to negotiate an acceptable resolution to the impasse with the Governor's office and we, the International Law Section, are placed in limbo as to how to plan our year. The President of the Bar has suggested that this time be used as an opportunity to look at ourselves very closely and restructure, to be more cost efficient, meeting the needs of both the public and our members. The Governor has said he does not want to affect the discipline or education functions of the Bar. But he has. All the volunteer sections, of which the International Law Section is only one, have been placed in the untenable position of not being able to go forward with their planning for education programs for the coming year.

Our funding does NOT come from the fees bill. The International Law Section is self sufficient from its own section dues and the income from its programs. However, certain of the commitments to facilities and other needs have to be contracted for by the State Bar on behalf of the Sections. The Bar cannot contract for these services beyond April 1998 when it is anticipated that it will run out of money if a fees bill is not passed.

To continue with our obligation to provide services to the members of the International Law Section, your executive committee had to take certain courses of action. These included arranging for International Law Section funds to removed from the Bar's general account and requesting International Law Section members to pay the annual section dues to sustain the Section's activities.

We also committed to go forward with the most exciting International Law Weekend in the history of the Section! After many months of discussions, we reached agreement with LAWASIA, a conglomerate of Asian Bar Associations, to hold their annual meeting in San Francisco together with the International Law Section.

We are all hopeful that the outcome of the disagreement with the Governor's office will permit the continuation

of the International Law Section so that the many programs we undertake can be continued for the benefit of our members. We anxiously await the results of the negotiations and pledge to do whatever is possible to continue to provide services to International Law Section members. SO, PLEASE PAY YOUR SECTION DUES AS SOON AS POSSIBLE! The State Bar has promised to keep these incoming funds available for our Section's use.

INTERNATIONAL LAW WEEKEND 1998

The planning for the International Law Weekend is going full steam ahead and the State Bar Education Foundation has contracted with the Grand Hyatt Hotel in San Francisco for the event. It will be held from July 30 through August 2, 1998. The dates of the education programs and social meetings during this time will be announced as soon as these are finalized. Professor John T. (Jack) McDermott, our Section secretary, has taken full charge of the program, organized committees to do various functions and has negotiated with LAWASIA to be our co-presenters. He has already given countless hours to the program which will be the event of the year. Mark your calendars and watch the mail for further announcements.

We are looking for a name for the program which will include Intellectual Property and Technology law. Please contact Jack McDermott with any suggestions.

STRESSBUSTERS WEEKEND

We are looking forward to the 2nd annual R & R weekend at the Palms in Palm Springs on the weekend of March 13-15, 1998. Last year all the attendees were ecstatic about the weekend. Susan Liebeler has again put in a lot of time and effort to get us the facility and plan the programs for the weekend. I encourage you all to attend this weekend at the health spa and get to meet your International Law Section colleagues and friends. There will be MCLE credit as well as a special low price for the accommodation which includes the health food (three meals a day) and the exercise workouts. The Palms have even agreed to allow our members to extend their stay at the low rate. I look forward to seeing you there. Contact our Administrator Pres Soberon at the Bar for further information.

SPEAKERS

If you, or someone you know, has an interest in doing a presentation at the State Bar Annual Meeting, at the Education Institutes or at the International Law Weekend, please contact Michael Tyler our Vice-Chair and the Program Chair. We will try and accommodate as many requests as possible within the budgetary limitations imposed upon us.

APPLY FOR COMMITTEEE APPOINTMENT TO THE INTERNATIONAL LAW SECTION

We are constantly looking for new members to our committee. The applicants should have international law experience and be able to contribute to the International Law Section. We also want to meet the diversity requirements of the State Bar and appeal to you all to help find applicants. I will contact any individual who is referred to me. Please give me call or drop me a note with the details of any prospective qualified applicant. You should also consider making an application yourself. Request an application for a 1998 appointment from the Appointments Office, State Bar of California, 555 Franklin St., San Francisco, CA 94102-4498; 415/561-8866 or 213/765-1585. The deadline to file the formal appointment application with the Bar is March 2, 1998.

MEMBERSHIP INPUT REQUESTED

As a member of the International Law Section your input is very valuable. Please let me know if you have any suggestions about improving our services, the quarterly newsletter, the Practitioner or any of the programs

which we produce. The volunteers who provide these services want the feedback and will try and meet the needs of our membership.

WEB PAGE

Take a look at the <u>State Bar Web Page</u> [http://www.calbar.ca.gov] and in particular at the <u>International Law Section</u> pages. We will soon have the details of many foreign bar associations published at our web site. If you have any ideas to contribute regarding the Web Page, please contact Margaret Hastings-Hale.

David Hirson, Hirson Wexler Perl & Stark Chair, International Law Section

Note: The contact information of each of the persons referred to above is printed elsewhere in this newsletter.

TIRED? FRAZZLED? Ready for a Relaxing Break?

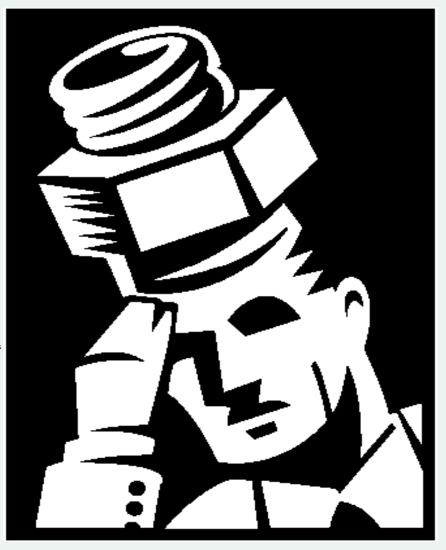
You need STRESS BUSTERS

A Stress Reduction - Networking MCLE Weekend

Sponsored by the INTERNATIONAL LAW SECTION of the State Bar of California

Earn At Least 5 Hours of MCLE Credit at the internationally famous spa THE PALMS AT PALM SPRINGS

MARCH 13-15, 1998



Read on for more information or proceed directly to <u>registration information</u> or the <u>registration form.</u>

STRESS BUSTERS: BEAT THE STRESS OF YOUR SUCCESS	Do you get up early for a teleconference with Rome? Stay up late to send one last fax to Singapore? Do you love your law practice but sometimes wonder if you'll live to enjoy it? Here's your chance to get the refueling you need while you relax, exercise, meet other international law practitioners and earn MCLE credits all at once.
STRESS BUSTERS: AWARD WINNING LOCATION	A recipient of the Conde Nast Readers' Choice Award for the world's best resorts and spas and ranked by Conde Nast as one of the top ten U.S. spas, The Palms at Palm Springs is the site for this weekend of relaxation, information and fun.
STRESS BUSTERS: GREAT NETWORKING OPPORTUNITY	This weekend is a chance to meet other attorneys who practice law in the international arena. Need the name of a great tax attorney in Barcelona? Someone who can help prevent intellectual property piracy in Asia? The other attendees are among the top international lawyers in California, good people to know in a world of legal problems.

STRESS BUSTERS: GREAT VALUE



You'd expect a weekend at the Palms to be an extravagant indulgence, but we've negotiated extraordinary room rates of only \$121.50 (double occupancy, per person) and \$157.50 (single occupancy) per night, plus 14% gratuity and room tax. AND this low rate includes:

- hotel accommodations
- three daily nutritionally-balanced, low-calorie meals and snacks
- thirteen optional fitness classes
- the opportunity to consult with a registered nurse about your diet and exercise program
- complete use of the resort facilities, including swimming pool, saunas and spa, plus weight training and aerobic equipment.

AND these same low rates apply if you arrive a few days early or stay a few days after the weekend! Just specify arrival and departure dates when you make your reservation. Special spa services, such as massage, reflexology treatments, facials and body scrubs are also available at reasonable additional costs. Contact the Palms directly at **619/325-1111** for further information and scheduling.

STRESS BUSTERS:
MCLE AND
OTHER PRESENTATIONS



The focus of the MCLE presentations will be stress reduction and/or law office management. A registered dietitian will speak on developing a nutritional program designed to meet your personal needs and lifestyle. Find out how good eating habits (which can be maintained while practicing law!) can help you reduce your stress as well as keep you healthy. There will also be a presentation regarding practical suggestions on how to incorporate physical activity into a professional lifestyle (even one as hectic as yours!).

A minimum of five MCLE credits will be available. An audio tape which carries one unit of MCLE credit on the elimination of bias will also be given to each MCLE attendee. The charge of 5 credits of MCLE is \$100 if you are a member of the International Law Section or \$135 if you're not. If you're not a member of the Section but would like to join, just let us know when you register. We'll apply part of your registration fee to the membership dues. You can become a member without further charge!

A non-MCLE presentation you can't afford to miss will be on the art of acquiring new clients while maintaining solid relations with continuing clients. Learn to be a "rainmaker" by doing things that feel safe and appropriate.

As a bonus, there will also be available image consultants who will meet with interested attendees for a complimentary color and style analysis to help them learn more about developing their best images. AND a representative from Macy's will be available along with the regional director of Tahari who will present a line of clothes designed especially for the executive woman. Your projected image is one of the most persuasive tools you will have; learn to make the most of it!

The State Bar of California and the International Law Section are State Bar of California approved MCLE providers.

STRESS BUSTERS: OTHER ACTIVITIES	Choices, choices, choices! In addition to the MCLE, do as much exercising (or as little) as you choose. If you like a challenge, start the day at 6:30 a.m. with the endurance walk, a vigorous 5-mile guided walk. If you want to catch a few extra winks, take the leisurely 1mile nature walk or just sleep in until breakfast, 8-9 a.m. During the day, lift weights, use the aerobic equipment, or take one of the 11 different exercise classes—from Aquaerobics to Step & Pump to Yoga, Stretch and Relaxation. Or relax by the pool and finish that best seller! Since The Palms is an intimate setting, you'll have plenty of time to network no matter which activities you choose.		
STRESS BUSTERS: ADDRESS AND DIRECTIONS	The Palms is located at 572 N. Indian Canyon Drive, Palm Springs, CA 92262. Travel south on Palm Canyon (Hwy. 111), turn left on Alejo and left on N. Indian Canyon Drive		
STRESS BUSTERS: STILL NOT SURE?	 Comments from Last Year's Attendees: "The most enjoyable MCLE credits I've gotten." Mitch Wexler, Hirson, Wexler, Perle & Stark, Irvine. "As advertised, it really works!" Bob Cotton, Hughes Aircraft, Los Angeles. "Great Weekend" and a good opportunity to get to know some 		
	 very friendly and collegial section members. I'm looking forward to coming next year." Nancy Honig, Internist Technologies, Sunnyvale. "We enjoyed ourselves immensely. A wonderful ambiance with marvelously interesting friends." Senator Omer Rains, Sacramento. "The best sleep I've had in months!" Stephanie Tramz, Raytheon Electronics, Mountain View. 		
STRESS BUSTERS:	Join us for a relaxing and informative weekend! Just email your questions to one of the co-chairs of the Weekend.		

WANT STILL MORE INFORMATION?

Just email your questions to one of the co-chairs of the Weekend, Susan Liebeler or Linnet Harlan. Just print out and fill in the <u>registration form</u> and return it by mail to: The State Bar of California, 555 Franklin Street, San Francisco, CA 94102-4498; or register by fax with a credit card payment to 415/561-8368. A limited number of spaces is available, register soon!

Please note: Each MCLE registrant must complete a separate program registration form. Photocopies may be used.

Deadline: Your form and check, payable to the State Bar of California, or credit card information must be received no later than February 6, 1998.

Questions: For registration information, please call 415/561-8808, or from Los Angeles call 213/580-5580. For program content and/or Section information, please call 415/561-8223.

Refunds: All requests for refunds and cancellations must be in writing and received no later than February 6, 1998. Requests for refunds will not be honored after February 6, 1998. A \$20 service charge will apply to MCLE refunds.

See you in Palm Springs!

STRESS BUSTERS: TO REGISTER

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International Law Section -- Stress Busters Weekend -- March 13-15, 1998

PROGRAM / HOTEL REGISTRATION FORM -- DEADLINE: FEBRUARY 6, 1998 Please read all registration, mailing, refund and deadline information in the program description. Bar # Name Firm Address City-State-Zip _____ Phone E-mail Guest's Name MCLE REGISTRATION International Law Section Member \$ 100 FEES: Non-Members \$ 135 Note: Registration fee Please credit \$35 of my nonmember fee toward membership in the not applicable for people International Law Section Please indicate method of payment: participating in MCLE Check Enclosed VISA MasterCard classes. **HOTEL FEES:** Please reserve Double Occupancy \$145.95 per night, per person (includes gratuity accommodations before the February 6, 1998 & room tax) . Please give the name of your guest or roommate. deadline. Per person Sharing with: Single Occupancy \$191.55 per night (includes gratuity fee includes one night's & room tax) accommodations; three Indicate: Arrival Date Arrival Time Departure Date A hotel deposit in the amount of \$157.50 per person is required. daily gourmet spa (Deposit will be applied to your total hotel bill upon checkout.) meals: and daily exercise and \$157.50 X ____ = \$ For changes to your hotel reservation, please call The Palms at fitness classes. A two-night minimum stay 800/753-7256. is required to obtain the special rate. **PAYMENT** Registration Fee Hotel Deposit Total Total amount enclosed or to be charged

CREDIT CARD INFORMATION (VISA/MASTERCARD ONLY)

I/we authorize the State Bar of California to use my/our credit card for the registration fee(s) and hotel deposit for the International Law Section Stress Busters Weekend. (MasterCard or VISA only.)

Expiration [Date				
Cardholder ¹	s Name				
Cardholder's Signature					
Code: 02	Thank you for registering for Stress Busters				

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Section Activities

LAWASIA CONFERENCE

The International Law Section will join with LAWASIA to co-sponsor a conference in San Francisco, July 29 to August 2, 1998. This will be the very first LAWASIA Conference to be held outside the AsiaPacific region.

The impetus for forming a law association for Asia and the Western Pacific -- LAWASIA -- came from a group of Australian lawyers in the early 1960s. Their efforts culminated in a conference held in Canberra in August 1966, at which the LAWASIA Constitution was approved. Eighteen countries were represented at the inaugural conference: Australia, Afghanistan, Hong Kong, India, Indonesia, Iran, Japan, Korea, Nepal, New Zealand, Malaysia, Philippines, Singapore, Sri Lanka, Taiwan, Thailand, Vietnam and Western Somoa. LAWASIA now has over 4,000 members from 56 countries. The first President of LAWASIA was Sir John Kerr, the Chief Justice of the Supreme Court of New South Wales, Australia; the current president is Mr. Takeo Kosugi, an internationally known lawyer from Tokyo. From its inception, LAWASIA was to be "an association in which lawyers would come together on the basis of common regional and professional interests, uncomplicated by any political or ideological commitment which might only serve to divide."

LAWASIA holds Biennial Conferences at different locations in the region; the first was held in Kuala Lumpur, Malaysia in 1968, the most recent in Manila, The Philippines in 1997. LAWASIA also has a number of sections, each of which holds periodic conferences. The Intellectual Property Section has held a number of regional conferences; the most recent was in Kota Kinabula, Sabah, Malaysia in November 1996. But neither LAWASIA nor any of its Sections have ever held a conference in the United States ... until now!

On Thursday, July 30, 1998, the Third LAWASIA Conference on Intellectual Property and the Tenth Annual International Law Weekend will formally open at the Grand Hyatt Hotel in San Francisco.⁵ The conference, which will conclude on Sunday, August 2 with a tour of the Napa Valley and a program on Geographical Indicators as Trademarks for wine, will include sessions devoted to the following topics:

- Copyright and Trademark in Cyberspace -- in Print -- in Character Merchandise -- in Animated and Live Filmed Entertainment -- in Music.
- Special 301: Protecting vital U.S. interests ... or gunboat diplomacy?
- The role of the Internet service providers and of Internet access providers in preventing the infringement of copyrights covering materials on their servers or bulletin boards
- Arbitration of Intellectual Property Disputes
- Export control policy in the cyberspace age; constitutional issues of control regimes applied to software; trends in extraterritorial controls and multilateral controls; nonproliferation controls.
- The Future of World-Wide Trademark Registration
- Preserving Intellectual property when contracting for offshore manufacture.

Recent Developments in the Intellectual Property Law of LAWASIA Countries

Approximately one hundred attorneys from the LAWASIA region are expected to attend, with many presenting papers during the session described above. The conference will formally close on Saturday evening, August 1, 1998, with a banquet.

- ¹ Law associations from Bangladesh, the People's Republic of China, Fiji, Macao, Pakistan and Papua, New Guinea subsequently bacame members of LAWASIA.
- ² The Administrative Headquarters of LAWASIA is currently in Darwin, Northern Territories, Australia.
- ³ LAWASIA Journal, Vol. 1, No. 1, 1969.
- ⁴ Other Biennial Conferences have been held in Jakarta, Indonesia, Tokyo, Japan, Seoul, Korea, Colombo, Sri Lanka, Bangkok, Thailand, New Delhi, India, Hong Kong, Perth, Australia, and Beijing, PRC. The 1999 Biennial Conference will be held in Seoul, Korea.
- ⁵ The formal opening will be preceded by a tour of the Silicon Valley, cosponsored by the University of Santa Clara School of Law.



THE STATE BAR SENIOR LAWYERS SECTION: A NEW VENTURE

T he Board of Governors of the State Bar authorized the creation of the Senior Lawyers Section to commence January 1, 1997. Its purposes include:

- Provide guidance and assistance to senior lawyers, and others, in preparing for, and adjusting to eventual changes in their professional and retirement lives.
- Help preserve and enhance the quality of life of the senior lawyer.
- Encourage interest in elder law and provide assistance to the elderly.
- Formulate programs, forums, and other activities for the promotion of the welfare of senior lawyers and seniors in general.

To fulfill these purposes, subcommittees have been appointed and objectives instituted.

The Section publishes a newsletter, *California Senior Lawyer*. The first edition appeared in the Spring of 1997 and contained articles on age discrimination, history of the Section, planning for retirement and pro bono opportunities. Other issues have followed.

The Section has presented, or has scheduled, programs on longterm health care, estate planning, mediation and arbitration, and elder law at the State Bar Annual Meeting and the Section Education Institutes. Plans are underway to organize meetings in different parts of the state, either independently or in conjunction with local bar associations. Also there is an ongoing effort to arrange liaison with existing State Bar Sections and groups with mutual interests.

Of primary importance is the need to increase the number of members. Membership is open to attorneys 50 years of age or older, active or inactive, and to associate members. Joining will enhance the success of this new venture and offer an opportunity to participate in an enterprise dedicated to assisting senior lawyers in attaining a comfortable and productive retirement. Charter membership is granted to those who joined in 1997 or will join in 1998.

Inquiries may be directed to: Liz Avila, Section Administrator, The State Bar of California, 555 Franklin Street, San Francisco, CA 94102-4498. Telephone: (415) 561-8246



NEW DIRECTORY OF FOREIGN BAR ASSOCIATIONS

The Executive Committee of the International Law Section of the State Bar of California has developed a directory of foreign bar associations in order to facilitate direct contact between California attorneys and their counterparts in foreign countries. In the near future you will be able to obtain a copy of the 1997 Directory of Foreign Bar Associations online at the International Law Section's homepage. In the meantime, you may obtain a copy of the directory by contacting Carol Banks at the State Bar of California offices (415/561-8368).

The directory is a work in progress. It does not yet include all countries of the world. In order to get the directory underway the Executive Committee contacted all foreign consular offices in the State of California and asked them to identify for the Section the bar associations in their respective countries that should be included in the directory. Inclusion of a bar association in the directory is not an endorsement of that association by the State Bar of California or the International Law Section.

We solicit your assistance in completing, correcting and keeping the directory current. Please forward your comments or corrections to Carol Banks or to Fred A. Rodriguez by e-mail at frodriguez@steinlubin.com.

The 1997 list includes information on bar associations in the following countries:

Argentina Armenia Australia Austria Barbados	Columbia Costa Rica Cyprus Czech Republic Denmark	Germany Greece Guatemala Honduras Hong Kong	Korea Lithuania Malta Mexico Monaco Netherlands	Portugal Russia Singapore Spain Sweden Switzerland
Belgium Belize Botswana Canada Chile	Dominican Republic Egypt El Salvador Finland France	Hungary Iceland Israel Italy Kenya	Norway Oman Peru Philippines	Thailand Tonga United Kingdom Uruguay



Section Activities

1998-1999 APPOINTMENTS TO STATE BAR COMMITTEES

Members interested in volunteering to serve on a State Bar standing committee, special board, or the section executive committee may apply for an appointment between January 1 and March 2, 1998. Each year the Board of Governors appoints approximately 200 new members to its committees. Appointment terms generally are for three years. The 1998-1999 committee year commences at the close of the 1998 State Bar Annual Meeting (October 4, 1998).

The deadline for receipt of applications is **March 2**, **1998**. The appointment applications are reviewed in the spring by the committee chairs, and the committee chairs make their recommendations to the Board of Governors. The board will make the appointments at its last regularly scheduled meeting, September 12, 1998. New appointees are notified as early as possible to allow their participation at the State Bar's Annual Meeting (October 1-4, 1998). Applicants will be notified of the board's action not later than the last day of the Annual Meeting.

The Board of Governors strives to make appointments that will achieve diversity and broad representation of the California legal community. The participation of all State Bar members is encouraged. The State Bar does not discriminate against persons on the basis of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS) or mental disability, medication condition (cancer), age (over 40), marital status, denial of family care leave, political affiliation, sexual orientation, disabled veteran or Vietnam era veteran status. Section members who previously served on the section's standing committees or otherwise been active in section activities are strongly encouraged to apply for a position on the section executive committee. Applicants to the executive committee must be members of the section to be eligible for consideration.

To request the application and information on the various committees, please <u>return</u> the following request form <u>not later than February 2</u>. After February 2, please call the Appointments Office at (415) 561-8855 or (213) 765-1585.

Please send me a 1998-1999 Appoir	ntment Application:
Name & State Bar #	
Firm:	
Address with Suite/FI.#	
City/State/Zip Code	
Daytime Telephone with Area Code	

Return this form not later than February 2, 1998 to: Appointments Administrator, Office of the Secretary, State Bar of California, 555 Franklin Street, San Francisco, CA 94102-4498.



IMMIGRATION LAW UPDATE -- WINTER 1997

David Hirson, Esq. & Catherine L. Mayou
Hirson Wexler Perl & Stark
Los Angeles, Irvine, San Diego, Phoenix & Las Vegas

- President Signs the Commerce, Justice and State Appropriations Bill into Law
- New Affidavit of Support Comes into Effect 12/19/97
- Employment of Iranians Illegal in Certain Circumstances

PRESIDENT SIGNS THE COMMERCE, JUSTICE AND STATE APPROPRIATIONS BILL INTO LAW:

- Section 245(i) of the Immigration and Nationality Act (INA) sunsets, but for an ameliorative "Grandfathering" Provision
- New Section 245(k) provides for Ongoing Adjustment Relief for most Employment Based Preference Categories

On November 26, 1997, President Clinton signed the Commerce, Justice and State Appropriations Bill (HR2267) into law bringing finality to a hotly-debated, highly politicized issue that had relentlessly occupied the attention of Immigration Advocates and Congress for months on end.

Despite Senate support (990) for a permanent extension of §245(i) of INA and extensive support from House members for a continuation of the program, Republican leadership moved to block the permanent extension of §245(i) owing to the aggressive lobbying of key House Representatives Lamar Smith (TX), Dana Rohrabacher (CA) and Brian Bilbray (CA). The result was a political compromise in which there were no clear winners.

The "old" §245(i)(1) has been replaced with an ameliorative "grandfathering" provision [the "new" §245(i)(1)], which essentially provides that an alien who is physically present in the United States, but who entered without inspection [§245(a)], or is within the class of persons described in §245(c) **AND**

- 1. The alien is the beneficiary, or the spouse or child of a beneficiary, of a familybased or employmentbased immigrant petition which was filed on or before **January 14, 1998, OR**
- 2. The alien is the beneficiary, or the spouse or child of a beneficiary, of an application for a labor certification filed pursuant to the regulations of the Secretary of Labor on or before **January 14**, **1998** may apply for adjustment of status to that of an alien lawfully admitted for permanent residence, **regardless of when the visa actually becomes available to the alien** (i.e. the priority date for that particular visa category). Thus an alien who files such a petition or application on or before January 14, 1997 can rely on that fact to apply for adjustment of status **in the United States** when a visa becomes available to that alien at a future date (hence the "grandfathering").

The significance of this legislative concession is that any person who meets this filing deadline will be spared the only alternative procedure to obtain an immigrant visa, that of consular processing, whereby the intending

immigrant must leave the United States and return to his or her country of citizenship and apply for the relevant visa at the U.S. Consulate for that country. The major flaw in this process is that a person who has been out of status in the United States for 180 days from April 1, 1997 and who then leaves the U.S. for whatever reason will be **barred** from being admitted to the United States for a period of three years. If a person is unlawfully present in the U.S. for a year after April 1,1997, and then leaves the U.S. he or she will not be admitted to the U.S. for a period of **ten years**. These bars to admissibility, introduced by §212(a)(9)(B)(i)(I) and (II) of the INA, thus have a devastating effect on an intending immigrant who has no alternative but consular processing, and although the new §245(i) does provide a window for a large number of immigrants who are eligible to file immigrant petitions, the window closes on January 14, 1998.

A new and welcome addition to §245 of the INA, introduced by the new legislation, is §245(k) which is separate and distinct from the limited relief provided by the new §245(i). §245(k) provides that an immigrant who is eligible to receive an immigrant visa under the **first four employment-based preference categories** may apply for adjustment of status under §245(a) if, on the date of filing for adjustment, the alien is present in the United States pursuant to a **lawful admission**, and that the alien has not, for an **aggregate period** exceeding **180 days**:

- failed to maintain, continuously, a lawful status
- engaged in unauthorized employment
- otherwise violated the terms and conditions of the aliens admission

Notably absent from §245(k) relief is the fifth employment-based preference category -- the Alien Entrepreneur, or so-called "million dollar investor visa". In addition, there is no reference to the impact on spouses and dependent children of the petitioning immigrant. It is also important to note that §245(k), unlike §245(i), is an ongoing provision which does not depend on petitions in the relevant categories being filed on or before January 14, 1998. Petitions filed under §245(k) may be filed at any time provided that the alien was lawfully admitted to the U.S. and the violation in question does not exceed 180 days. One semantic problem which appears to be presented by §245(k) concerns the wording of §245(k)(2) and §245(k)(2)(A): §245(k)(2) uses the phrase "an aggregate period exceeding 180 days", which suggests that the period in question does not have to be continuous, whereas §245(k)(2)(A), which purports to qualify §245(k)(2) further, uses the word "continuously" when describing the failure of an alien to maintain lawful status for the purpose of counting the 180 days. It is hoped that this apparent contradiction will be clarified in the near future.

NEW AFFIDAVIT OF SUPPORT COMES INTO EFFECT 12/19/97:

The new Affidavit of Support, Form I-864, will be required for immigrant visas and adjustment of status applications filed on or after December 19, 1997. The Form must be completed by U.S. citizens and legal permanent residents who sponsor immediate relatives and family members as immigrants as well as employment-based immigrants who are coming to work for relatives or companies where a relative owns 5% or more of the company. The law requires a sponsor to demonstrate an income level at or above 125% of the Federal poverty line, as published annually by the Department of Health and Human Services. To establish income level, the sponsor must provide proof of current employment and include copies of Federal income tax returns for the preceding three tax years.

EMPLOYMENT OF IRANIANS ILLEGAL IN CERTAIN CIRCUMSTANCES

The Office of Foreign Assets Control (OFAC), Department of the Treasury, recently informed the Department that it is unlawful for a U.S. employer to issue a binding offer of employment to an Iranian resident in Iran, since it would amount to engaging in an unlawful transaction for services of Iranian origin. The Department has asked the INS for its opinion as to whether or not these employment-based cases should be denied.

For more information contact David Hirson at 714/251-8844, fax 714/251-1545, e-mail hirson@hwps.com.



Current Developments

NEWS FROM AROUND THE WORLD

Editor: John J. Stifter

Student Reporters:

- Christopher Martin/UCLA Law School
- Susan Andrews/South Western Law School
- Fabienne Struell/South Western Law School
- Immigration
- World Trade Organization
- International Tax Proposed Treaties and Protocals
- Public International Law
- Foreign & Comparative Law

IMMIGRATION

Sweatshop Immigrants Reach \$2 Million Settlement

In 1995, eighty illegal immigrant workers from Thailand and Latin America were freed from near slavery conditions in a barricaded garment sweatshop in El Monte, California. On October 24, 1997, a settlement of \$2 Million was reached in the civil lawsuit that the garment workers had filed against five retailers and manufacturers whose garments were being assembled in the sweatshop. The settlement was reached even though the companies denied knowledge of the conditions.

Foreigner crackdown in Malaysia

Malaysian immigration authorities have initiated nationwide checks on private universities to identify foreign lecturers working illegally in the country. This action results largely from the November discovery of 23 foreigners teaching without permits at a single international school, including citizens from the U.K, U.S., Australia and New Zealand. Most had entered the country initially as tourists. These violators face possible fines and, or jail time.

Canada-U.S. Border Crossings

Facing pressure from Canada, the U.S. House voted to delay until at least September 1999 a law that would require Canadians to prove citizenship with every U.S. border crossing. Several U.S. lawmakers have vowed to strike the law form the books before that time. The law presents a challenge in the midst of the a new wave of

immigration crackdowns toward Mexico. U.S. officials seek to avoid offending Mexico through favorable treatment of Canadians, while at the same time hoping to maintain the traditionally friendly U.S.Canada relationship.

WORLD TRADE ORGANIZATION

China and the WTO

The House began considering on November 4 a bill that would grant China permanent mostfavorednation trade status as well as prod China toward WTO accession. The bill would compel China to make an acceptable offer for WTO membership within 6 months, or face 4 to 7 percent tariffs. The tariffs would go into effect 6 months later, allowing China time to negotiate.

Taiwan and the WTO

The 1997 Republican "Policy of Freedom" sanctions package directed toward China includes a bill that would allow Taiwan to enter the WTO ahead of mainland China. Most of the bills in this package began House consideration in November.

INTERNATIONAL TAX - PROPOSED TREATIES AND PROTOCOLS

Double Taxation with Canada

Proposed Canadian legislation would have created the risk of double taxation for U.S. taxpayers. The proposed legislation called for a Canadian tax on U.S. citizens and corporations which transferred stock in privately held U.S. entities with real estate holdings in Canada. In April 1997, the U.S. and Canada reached an agreement for a Tax Treaty amendment, whereby foreign corporations are exempted to avoid double taxation issues. The proposed treaty amendment also calls for taxation of social security benefits only in the country of residence and applies to benefits paid after 1995 and includes a refund provision.

Austria and U.S. Revise 1956 Tax Treaty

The proposed treaty on tax between the U.S. and Austria is a comprehensive update of the 1956 Convention. United States authorities are provided improved access to Austrian banking information for tax enforcement purposes in connection with criminal investigations. Capital gains provisions now permit tax on profits which derive from the removal of fixed property from the nonresidence State and prevents duplicate tax in the residence state. Investment income is taxed at the source with a 5% rate for direct investment dividends and a 15% rate for portfolio dividends. Most interest and royalty payments are exempt from source taxes. Royalties on commercial films, television and radio broadcasts may be taxed at a rate up to 10%. Comprehensive antitreaty shopping provisions are included.

Switzerland and U.S. Revise 1951 Tax Treaty

The proposed tax treaty between the U.S. and Switzerland is a comprehensive update of the 1951 treaty which generally follows the pattern of the OECD Model Convention. The exchange of information provisions remain more restrictive than with most countries, however modest increases are provided. The prevention of tax fraud is now clearly set forth as a basis for the exchange of information under the treaty without a violation of Swiss banking secrecy laws. Tax fraud is given an expansive definition within the treaty provisions.

Thailand and U.S. Propose First Tax Treaty

The first proposed tax treaty between the U.S. and Thailand is a major step in efforts to expand tax treaty networks in Asia. Each country agrees to modest reductions in its taxes on income earned in that country by residents of the other country. These reductions are in line with those found in other treaties the U.S. has with other developing countries. The provisions permit the taxation of U.S. residents in accordance with Thai law for

gains from the disposition of property. This provision is reciprocal, but relevant U.S. tax laws generally only apply to the sale of real property. Exchange of information provisions along the lines of OECD are included. The standard exchange of information provisions do not become effective until Thailand enacts enabling legislation.

PUBLIC INTERNATIONAL LAW

Developing an International Criminal Court

The Preparatory Committee of the United Nations is drafting a convention for the establishment of a permanent International Criminal Court (ICC). Jurisdiction is likely to be limited to crimes such as genocide, crimes against humanity and other serious violations. The basis for automatic jurisdiction remains contested and concurrent jurisdiction with national courts remains an essential principle. The ICC is intended to be complementary to national criminal justice systems in cases where such trial procedures may not be available or may be ineffective.

Hungary & Slovakia Obligated to Accomplish River Project

The International Court of Justice ruled on a dispute arising from a 1977 treaty between Hungary and Czechoslovakia (now Slovakia) to construct a dam in the Danube river. In 1989 Hungary abandoned the project and asserted that it had unilaterally terminated the treaty, alleging that it posed national environmental and water supply risks. Slovakia proceeded with its own project, affecting Hungary's access to Danube water. The Court held that Slovakia became a party to the 1977 Treaty as a successor to Czechoslovakia and that Hungary's termination was not effective. Hungary and Slovakia were directed to fulfill the treaty objectives, including the creation of a joint operational regime for the Slovak dam with a focus on current norms of environmental law.

Tax Harmonization and the E.U.

The European Commission recently proposed a tax coordination plan that would include a nonbinding corporate tax code and a set of rules for harmonizing savingstax pollicies. Tax harmonization is seen by E.U. leaders as the final and most difficult hurdle after European currency union is completed. Tax policy stands as one of the few areas where member states can maintain de facto protectionist policies by offering preferential tax rates.

E.U. and the Environment

Britain has recently considered joining 11 other European Union members in ignoring a 1992 E.U. "ecolabe" program in favor of pursuing its own labeling scheme. The E.U. program was intended to make it easy for consumers to identify environmentally friendly products, but has largely been regarded as a failure. The E.U. may abandon the allinclusive program next year, and instead favor harmonization of individual member state ecolabel plans.

Tadic Sentenced by International Criminal Tribunal

Bosnian Serb "Dusko" Tadic, who was found guilty of crimes against humanity and violations of the laws or customs of war, was sentenced to twenty years for beating, torturing, and murdering Bosnian Muslims during Bosnia's 1992-1995 war. Tadic has appealed the judgment. It is unclear where he will serve his sentence. Italy and Finland have signed agreements to house convicted war criminals, while nine other countries may also be willing to do so.

International Criminal Tribunal Witness Protection with UK

The United Kingdom agreed to accept for relocation witnesses who may face danger by appearing before the International Criminal Tribunal for the Former Yugoslavia. The United Kingdom is the first State to enter into an agreement that may enable reluctant witnesses to come forward. This assistance represents an enhancement to the International Tribunal's statutory duty to protect victims and witnesses. This duty includes the

establishment of a Victims and Witnesses Unit, which recommends protective measures and provides counseling and support to such persons.

Vietnam & Thailand Sign Delineation of Territorial Waters Treaty

Vietnam and Thailand recently signed a maritime claims treaty. The treaty is the first delineation agreement Vietnam has achieved. The accord marks out the continental shelf as well as exclusive economic zones (EEZ) for both countries. It also establishes guidelines for resolving territorial disputes that in the past have harmed relations between the two.

Japanese Turtle Shell Smuggler Sentenced to 14 Months

A Japanese man was sentenced to 14 months in prison and fined 1 million yen for smuggling into Japan 115 kilograms of hawksbill turtle shells, worth 15 million yen. The act violated Japanese customs law. The turtle is protected under the United Nations Convention on International Trade in Endangered Species.

ICTY Has No Enforcement Power over Sovereign States

The Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) ruled that a subpoena duces tecum cannot be issued to a State or State Official acting in his or her official capacity. The threat of penalty by ICTY to compel the production of documents may only be applied to individuals acting in their private capacity. The Chamber further observed that the ICTY may not take enforcement measures against sovereign States because States can only receive binding orders or requests. When a State fails to comply with such orders, the U.N. Security Council determines what action to take.

FOREIGN & COMPARATIVE LAW

Criminal Copyright Law in Mexico

Mexico enacted a new copyright law effective on March 25, 1997 making violations criminal. Intellectual property including print, computer hardware and software, multimedia, databases, music and films are protected by the new law. Mexican nationals and foreigners are equally protected under the new law. Although the law is intended to reduce sales of pirated material, the criminal courts in Mexico are believed to be unprepared to deal with complex copyright violations. As a result, many corporations are reluctant to submit complaints to the criminal courts.

Sexually Discriminatory Pardon Upheld

In 1994, South African President Nelson Mandela pardoned prisoners, including mothers with minor children, because their crimes were not serious. Mandela's apparent motivation for this decision was based on the fact that the social and economic burdens of childrearing, largely due to fathers' failure to accept their share of the responsibility, contribute significantly to women's' inequality in South Africa. Mandela's pardon gave rise to a challenge by a male prisoner with a child under twelve, on the grounds of unfair sex discrimination. The Constitutional Court of South Africa decided that the sex discrimination in the Presidential pardon was constitutionally acceptable and not unfair, as it reflected the inequality between men and women in childrearing.

Malaysia

Canadian Journalist Facing Jail for Contempt

A Far Eastern Economic Review correspondent, Canadian citizen Murray Hiebert, is appealing his jail sentence for contempt of the judiciary, the first such sentence in Malaysian history. The case arose from his article concerning increasing damages claims in civil suits, focusing on a suit filed by the wife of a Malaysia Court of Appeal judge. Sentenced to three months in jail by the Shah Alam High Court, Hiebert filed both a notice of appeal against his conviction for contempt and a motion against the Court's decision to dismiss his application for a release of his passport, surrendered as a condition of bail. While he was allowed to use his passport prior to sentencing, the Court rejected his request on the grounds that he might flee Malaysia.

Priority for Women in Promotions in Public Sector Conditionally Permitted

A German school denied promotion to a male teacher, relying on a national law giving women priority for promotion over men where there are fewer women than men in a particular career position, unless, other qualifications being equal, reasons specific to an individual male candidate make him preferable. The Court of Justice of the European Communities concluded that, because prejudices and stereotypes regarding the role and abilities of working women favor promotion of males over females with equal qualifications, priority given to such women, which is intended to restore equality, does not violate Community law. There must, however, be an objective assessment of each candidate regardless of sex, and promotion of a male cannot be excluded initially.

Free Press in South Africa

South Africa gambling mogul Sol Kerzner convinced a publisher to withhold a disparaging book about him in October, pending a high court decision. The book criticizes Kerzner's personal life and profiteering from apartheid policies, and alleges corrupt dealings with the apartheidera National party government. The case is cited by foreign commentators as a litmus test for the freedom of press under South Africa's new, postapartheid constitution.



Current Developments

INTERNATIONAL LAW SECTION GUIDE TO NAVIGATING THE WORLD WIDE WEB

Glen Price, Best, Best & Krieger, Los Angeles, California

The series featuring a different area of international practice each issue continues with a look at international environmental law resources on the web.

ENVIRONMENTAL LAW ON THE WEB

The global warming treaty negotiated in Kyoto in December, 1997, has served to highlight the growing prominence of environmental issues in international law. During the 1990's, states have come to recognize the need to address environmental issues on a multilateral basis and the number of bilateral and multilateral treaties and agreements on issues ranging from water rights to the preservation of biodiversity have proliferated. As a function of the broad public interest in the environment, the Internet has a variety of excellent resources for attorneys with either a practice or a personal interest in international environmental law.

Information on the Kyoto Global Warming Treaty:

Official Page of the Conference on Climate Change: www.cop3.html

Please note: This page was discontinued after publication of the newsletter and can no longer be accessed. The page formerly contained all of the official documentation and working papers for the conference.

Official U.S. Page on the Kyoto Conference:

www.state.gov/www/global/global issues/climate/index.html

The U.S. page is more extensive in that it includes a variety of related material including reports from congressional committees and speeches by members of the administration.

Sources for international and domestic environmental law:

Environmental Treaties and Resource Indicators: sedac.ciesin.org/entri/

Extensive searchable database on environmental treaties and natural resource information.

Internet Law Library Environmental Law Page: law.house.gov/101.htm

This site is a the place to start when looking for a particular law, treaty, or piece of legislation

U.S. Secretary of State Bureau of Oceans and International Environmental and Scientific Affairs:

www.state.gov/www/global/oes/index.html

This site lays out official U.S. policy with respect to various environmental initiatives.

Environmental Protection Agency: www.epa.gov

The EPA has done an excellent job with this site with respect to domestic environmental legal materials and current issues; however, it is a bit thin on international initiatives. This site also has an extensive page on global warming: www.epa.gov/globalwarming/.

European Environment Agency: www.eea.dk

As with all of the EU sites, this site is weak on providing texts of laws and regulations, but contains a wealth of position papers and policy statements.

Econet: www.igc.org/igc/econet/index.html

Although this is not specifically a legal site, it is a comprehensive clearinghouse for environmental issues and groups and contains an extensive database on environmental programs throughout the world.

International Council for Local Environmental Initiatives: www.iclei.org

This is an interesting site because it provides a databank and clearinghouse of local government and grass roots initiatives that are being implemented to target an array of environmental problems and concerns.



Current Developments

OTHER ACTIVITIES OF INTEREST

- ABA Section of International Law and Practice: "The Foreign Corrupt Practices Act"
- Border Trade Alliance: "Meeting North America's Infrastructure Needs"
- Whittier Law School -- "Assets of the Holocaust: The Search for Justice"
- American Management Association "How to Do Business in China"
- InterPacific Bar Association Eighth Annual Meeting and Conference
- ABAILEX "Delegation and Briefing Trip to Asia"
- Editorial Information

ABA SECTION OF INTERNATIONAL LAW AND PRACTICE "THE FOREIGN CORRUPT PRACTICES ACT: HOW TO COMPLY AND COMPETE IN INTERNATIONAL MARKETPLACES"

January 16, 1998 (Coral Gables, Florida) February 20, 1998 (Marina Del Rey, California)

The ABA Section of International Law and Practice, in cooperation with the International Sections of the California State Bar and the Florida Bar, is sponsoring an East and West Coast presentation of "The Foreign Corrupt Practices Act: How to Comply and Compete in International Markets." Both programs will feature faculty comprised of leading authorities on the FCPA, who will address a wide range of issues that confront practitioners and business executives engaged in international business. In addition, the panel of experts will address hypothetical situations submitted by participants, providing insight into how businesses and their advisors should address such situations and the perspective likely to be taken by the government. Written materials will include sample compliance programs.

For more information about the program, please contact Earnestine Murphy, Associate Director, Center for Continuing Legal Education, American Bar Association, 541 N. Fairbanks Court, Suite 1600, Chicago, IL 606113314. Phone 312/988-6204; Fax 312/988-5368.

BORDER TRADE ALLIANCE "MEETING NORTH AMERICA'S INFRASTRUCTURE NEEDS"

February 15-17, 1998 Hotel Crowne Plaza, Mexico, D.F.

The Border Trade Alliance was founded in 1986 to act as a forum for its members to discuss and advocate issues pertaining to trade in the Americas. Traditionally, the BTA has focused its attention upon the U.S. Southwest Border region. More recently, however, the organization has expanded its scope to address issues of national and international significance, such as NAFTA and the potential expansion of that treaty relationship

to include other countries in the hemisphere.

The Border Trade Alliance is sponsoring this conference to address issues raised by the strains on infrastructure created by unprecedented levels of trade throughout North America. These physical limitations in turn limit the promise of NAFTA. At the conference, representatives of some of the most important construction companies in the U.S. and Mexico will address these problems of infrastructure. From the user's side, there will be representatives from the National Council of Maquiladoras of Mexico, the American Chamber of Commerce of Mexico, and the U.S.Mexico Chamber of Commerce.

For information, please contact the BTA by fax at 602/250-3360 or by mail at P.O. Box 53999, MS 8612, Phoenix, AZ 85072, or call Jill Anderson at 800/333-5523.

WHITTIER LAW SCHOOL "ASSETS OF THE HOLOCAUST: THE SEARCH FOR JUSTICE"

February 28 and March 1, 1998 Costa Mesa. California

Whittier Law School presents the first conference in the United States dealing with the treatment of World War II assets of the victims of the Holocaust. Keynote speakers are Madeleine May Kuhn (American Ambassador to Switzerland) (invited) and Lord Greville Janner (Member of the British House of Lords, Chair of the British Holocaust Educational Trust, Vice President of the World Jewish Congress). Other featured speakers include lawyers from Switzerland and from the U.S. who represent claimants, law professors and representatives of the Swiss government. For further information, please contact Prof. Karl Friedrich at the Whittier Law School (714/444-4141 ext. 260).

AMERICAN MANAGEMENT ASSOCIATION "HOW TO DO BUSINESS IN CHINA"

April 22-24, 1998 San Francisco, California

The American Management Association is sponsoring a seminar aimed at becoming familiar with Chinese business practices and managing successful joint ventures in China. Benefits of the seminar include acquiring an understanding Chinese culture and business climate, learning how to find and evaluate agents and distributors, cutting through red tape to avoid middlemen, and giving effective presentations to Chinese audiences. For more information, please contact the AMA at 800/262-9699.

INTERPACIFIC BAR ASSOCIATION EIGHTH ANNUAL MEETING AND CONFERENCE

May 15, 1998 Auckland, New Zealand

The InterPacific Bar Association will hold its Eighth Annual Meeting and Conference in Auckand, New Zealand. The May 1997 annual meeting and conference in Kuala Lumpur attracted more than 550 lawyers, and a similar number is expected to participate in Auckland.

The theme of the first day of the conference will be the impact of technology on legal practice. The morning plenary session will feature speakers on the topic "Technology, Telecommunications and International Business." In the afternoon, there will be concurrent programs addressing technology in the courts and in arbitration proceedings, and online commercial transactions (with discussion of intellectual property and tax ramifications). The next two days will feature 23 different programs presented by the IPBA's 16 committees.

Social events will conclude each of the first three days, and will include a welcome reception and New Zealand craft exhibition, a dinner at Old Government House, and a Pacific theme evening. Immediately following the conference will be the IPBA's annual golf tournament, which will be held at one of the finest courses in New Zealand.

For more information about the IPBA or the New Zealand conference, please contact Gerald Libby (tel. 213/896-2450; fax 213/896-2450) or Carl Anduri (tel. 415/268-6046; fax 415/268-7522).

ABAILEX "DELEGATION AND BRIEFING TRIP TO ASIA"

May 4-13, 1998 - Beijing, Hong Kong May 13-20, 1998 - Jakarta, Bangkok

ILEX is offering a combination of two backtoback Delegation and Briefing Trips to Asia. The weeklong trips are available separately or as a package. The programs and activities will focus on the legal issues involved in doing business in these growing markets. The first week will be devoted to the development of China's legal system, as it affects the conduct of business by U.S. companies in that country. The second week will focus on economic developments in Indonesia and Thailand. The Delegation will discuss prospects for enhanced business activities resulting from legal reforms that followed the recent financial crises in those countries. In all of the cities visited, programs will include briefings by the U.S. Embassy or Consulate, meetings with host government agencies responsible for regulating and approving foreign investment, meetings with local lawyers and businessmen, and meetings with representatives of the American Chamber of Commerce.

For further information, please contact Edison Dick at 202/393-7122 or ILEXEWD@aol.com.

Thanks, John

John Walton is the Editor of the "Other Activities of Interest" section and the Calendar Editor. If you would like to list any activities here, please contact John as follows:

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- Newsletter Editor and Contacts

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International Law is an area in which major changes occur frequently and rapidly. To address the needs of our members, the Section, from time to time, presents teleseminars of particular interest to our members. We publicize these teleseminars by sending faxes and e-mail messages. To receive notices of these programs, you must be sure we have your e-mail address and fax number. Unless you've received an e-mail or fax from us in the last three months or if your e-mail address/fax number has changed, send your e-mail/fax number to one of the addresses above.

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You will be able to turn to the Section's home page to see if there are any uptodate announcements while waiting for your next issue of the Newsletter, or even to find information about an event you saw in the Newsletter when you cannot locate your copy. If you have any other ideas for the home page, we would love to hear them.

Questions or comments may be directed via e-mail to Margaret Hastings-Hale, Sacramento, Tel: 916/321-4500, Fax: 916/321-4555, E-mail: mhh@ns.net.

Thanks to Debra Belanger, retiring Editor-in-Chief and to Glen Price, retiring Current Developments Editor.

We wish to thank Debra and Glen for the fine job each of them has done in producing a timely, professional publication for the last several years. Glen will continue his column on Navigating the World Wide Web.

Tom Bennett of the Bank of America Legal Department in San Francisco will be taking over as Editor, with John Walton, of Thomas & Walton in Los Angeles, as Associate Editor. John Stifter, of Thomas & Price, Woodland Hills, will serve as Current Developments Editor.

EDITOR & CONTACTS

Editor-in-Chief: Thomas R. Bennett **Associate Editor:** John R. Walton

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